

**Request for Review and Petition for Waiver of
the Baltimore-Washington Telephone Company**

Attachment 1:

Administrator's Decision on Contributor Appeal



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

By Certified Mail

June 28, 2011

Mr. Kenneth L. Menken
Chief Executive Officer
The Baltimore-Washington Telephone Company
122 Slade Avenue, Suite 250
Baltimore, MD 21208

Re: The Baltimore-Washington Telephone Company (Filer ID 823202)
Letter of Appeal Dated February 15, 2011

Dear Mr. Menken:

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeal you submitted on behalf of The Baltimore-Washington Telephone Company (BWTel), dated February 15, 2011. The appeal requests waiver of the late filing fees associated with BWTel's 2008, 2009 and 2010 FCC Form 499-As. As discussed in more detail below, USAC hereby denies the appeal.

Decision on Appeal: Denied, with an adjustment to the late payment penalties.

Federal Communications Commission (FCC or Commission) regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are required to file quarterly FCC Form 499-Qs, unless they meet the *de minimis* exemption.¹ USAC relies on projected revenue for the upcoming quarter reported on the FCC Form

¹ See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). See also, 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (providing that "[i]f a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability") (internal citations omitted). We note that regulations governing the Telecommunications Relay Service require all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete a FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

499-Q to bill each carrier its federal universal service contribution obligations. USAC relies on the annual FCC Form 499-A to reconcile billings for the previous year, as projected on the FCC Form 499-Qs.²

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest, and is a requirement on which the FCC relies in order to determine the quarterly universal service contribution factor.³ The Commission's rules state that the Administrator shall assess a monthly remedial sanction if a contributor is more than 30 days delinquent in filing an FCC Form 499 until the date of filing.⁴ The late filing fee is the greater of \$100 per month or the amount derived when a rate of interest equal to the U.S. prime rate plus 3.5 percent is assessed on the amount due.⁵ In all cases, it is the carrier's obligation to ensure filings are made in a timely manner.

BWTEL registered with USAC on May 30, 2003. Subsequent to its registration, BWTEL was obligated to submit the Form 499-A by April 1 of each year even if it met the *de minimis* exemption.⁶ BWTEL late filed its 2008, 2009 and 2010 FCC Form 499-As on August 19, 2010. Because the 2008, 2009 and 2010 forms were not received until August 2010, late filing fees totaling \$5,100 were assessed and reflected on the July 2008 through August 2010 invoices.

BWTEL's appeal letter acknowledges that, as a small CLEC, it historically has been required to file FCC Form 499-As, although as a *de minimis* filer, it has been exempt from universal service contribution requirements. Moreover, BWTEL asserts that the former staff person in charge of filing the FCC Form 499-As was dismissed for cause and that among the tasks the former employee failed to perform was the annual filing of the FCC Form 499-As.

BWTEL's appeal letter states that it believes USAC sent requests for filing, invoices and warnings to the home of the previous owner of the company and not to BWTEL's current address or its registered agent, who it says had its updated contact information. BWTEL's appeal letter further states that no telephone calls were placed to its office and no one attempted to contact it by email, information that BWTEL states was readily available on its website. BWTEL explains that the first notice it received regarding the outstanding FCC Form 499-As and late filing fees was in approximately July 2010. BWTEL contends that had USAC contacted the company regarding these matters in 2007, it would have promptly responded.

² See generally 47 C.F.R. Part 54.

³ *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, DA 05-520, 20 FCC Rcd. 4224, 4225-26, ¶¶ 3, 5 (2005).

⁴ 47 C.F.R. § 54.713. See also *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, et al., Report and Order, FCC 07-150, 22 FCC Rcd. 16372, 16379, ¶ 14 (2007) (*Comprehensive Review Order*).

⁵ *Id.*

⁶ See 47 C.F.R. §§ 54.708, 711.

As explained in the 2007, 2008, 2009 and 2010 FCC Form 499-A Instructions, a company must notify USAC of any changes to its contributor identification information in Block 1, regulatory contact information in Block 2-A, agent for service of process in Block 2-B, and/or FCC registration information in Block 2-C.⁷ As explained in all four sets of instructions, the person listed on Line 207 on the form submitted by the filer is the contact person to whom future FCC Form 499-As will be sent unless other arrangements are made.⁸ The form instructions clearly state, however, that “[f]ailure to receive a Telecommunications Reporting Worksheet from [USAC] or the FCC does not relieve the filer from its obligation to file in a timely fashion.”⁹ The instructions also explain that the person listed on Line 208 of the form is the company’s billing contact, to whom USAC will send billing information for universal service support contributions, unless other arrangements are made via written request.¹⁰ Finally the form instructions make clear that carriers and other telecommunications providers must update their registration information within one week of a material change.¹¹ Thus, the onus was on BWTel to inform USAC of any pertinent changes to its contact information to ensure receipt of future FCC Form 499-As and/or universal service fund (USF) billing information.

The contact person listed in BWTel’s 2007 FCC Form 499-A, the company’s last filing prior to the submission of its 2008, 2009 and 2010 FCC Form 499-As in August 2010, was Larry Rubin at P.O. Box 1786, Silver Spring, MD 20915, with an email address of LARRY@BWTEL.com.¹² As specified in the 2008, 2009 and 2010 FCC Form 499-A Instructions, each year USAC sent a hard copy of the most recent FCC Form 499-A to the company’s last known address, as provided on its 2007 FCC Form 499-A, prior to the FCC Form 499-A filing deadline.¹³ On multiple occasions, USAC attempted to contact BWTel regarding its failure to file its FCC Form 499-As and its resulting late filing fees and late payment penalties. For example, USAC sent emails to the contact person specified on the company’s 2007 FCC Form 499-A, notifying him of the company’s failure to file the 2008 through 2010 FCC Form 499-As.¹⁴ Further, USAC sent the company invoices at the billing address specified in the 2007 FCC Form 499-A that

⁷ Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2007), at 11 (2007 Instructions); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2008), at 11 (2008 Instructions); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2009), at 11 (2009 Instructions); and Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2010), at 11 (2010 Instructions).

⁸ 2007 -2010 Instructions at 16 (“The next [FCC Form 499-A] will be sent to this address unless other arrangements are made.”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 2007 Instructions at 17 (noting that registration information includes information reported in Blocks 1, 2-A, 2-B and 2-C of the FCC Form 499-A). *Accord* 2008 -2010 Instructions at 17.

¹² *See* BWTel’s 2007 FCC Form 499-A Telecommunications Reporting Worksheet at 2, Lines 207 and 208. It was not until July 21, 2010 that BWTel informed USAC that there had been a transfer of ownership of the company and that Mr. Menken was “at least one contact” for BWTel. Email from Ken Menken, BWTel to Debbie Tosi, USAC (July 21, 2010).

¹³ USAC’s records indicate that hard copies of the 2008, 2009 and 2010 FCC Form 499-As were mailed to BWTel, care of Larry Rubin, P.O. Box 1786, Silver Spring, MD 20915.

¹⁴ USAC’s records indicate that 2008, 2009 and 2010 non-responder notices were sent to Larry Rubin at LARRY@BWTEL.COM.

reflected the late filing fees and penalties that the company was incurring.¹⁵ USAC received a response from Mr. Rubin on Thursday, June 5, 2008 in response to the 2008 non-responder notice.¹⁶ In his response, Mr. Rubin stated that he was no longer associated with the company, and provided an email address for the new point of contact.¹⁷ USAC explained that the company must update its records in order for USAC to change the FCC Form 499-A contact information.¹⁸ As BWTel failed to update its 2007 FCC Form 499-A contact information or file its 2008, 2009 and 2010 FCC Form 499-As until August 2010, USAC properly relied on the company contact information listed on Lines 207 and 208 of BWTel's 2007 FCC Form 499-A when conducting its outreach.

With respect to BWTel's statement in its appeal that its registered agent was aware of its updated contact information, the 2007 through 2010 FCC Form 499-A Instructions explain that the contact information for a company's registered agent will only be used for notices, process, orders and decisions of the Commission to be served on behalf of a carrier that has a proceeding pending before the Commission.¹⁹ To USAC's knowledge, BWTel had no such proceeding pending. Further, the registered agent listed in BWTel's 2007 FCC Form 499-A is not the same registered agent listed in BWTel's 2008 through 2010 FCC Form 499-As.²⁰ Thus, absent BWTel updating its 2007 FCC Form 499-A or filing its 2008, 2009 and 2010 FCC Form 499-As, USAC would have no reason to know of or rely on BWTel's registered agent information.

The FCC rules require persons/businesses having business with the Commission to familiarize themselves with the rules and regulations that are relevant to their business.²¹ For carriers, this includes familiarizing themselves with the FCC Form 499-A and corresponding instructions, including the requirement to provide USAC with updated contact information. It is the responsibility of the entity with the reporting obligation to timely file its FCC Form 499s so that USAC may accurately project the contribution base and the contribution factor, as well as assess the entity's USF contribution obligations.²² USAC is not authorized to waive late filing fees unless there is an error by USAC. Because BWTel's 2008, 2009 and 2010 FCC Form 499-As were not received by their respective April 1 due dates and there was no error on USAC's part, BWTel's appeal is hereby denied.

¹⁵ See, e.g., USAC Invoice Statements dated July 22, 2008, January 23, 2009 and July 22, 2010 from USAC to Larry Rubin at P.O. Box 1786, Silver Spring, MD 20915.

¹⁶ Email from Larry Rubin to USAC Form 499 Team (June 5, 2008).

¹⁷ *Id.*

¹⁸ Email from USAC Form 499 Team to Larry Rubin (June 6, 2008).

¹⁹ 2007 Instructions at 16-17; 2008-2010 Instructions at 17.

²⁰ BWTel's 2007 FCC Form 499-A lists its registered agent as the Federal Research Corporation, whereas BWTel's 2008-2010 FCC Form 499-As list the company's registered agent as Business Filings Incorporated.

²¹ See 47 C.F.R. § 0.406.

²² *Comprehensive Review Order* at 16378, ¶ 12. See also *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.* WC Docket 06-122, Order, DA 10-751, 25 FCC Rcd 4646, 4648-49, ¶ 7 (2010).

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Pay & Dispute Policy

The FCC, in its *Comprehensive Review Order*, directed USAC to assess late payment penalties against all universal service contributors that are more than 90 days delinquent in paying invoiced obligations, including late filing fees.²³ Any debt more than 90 days old will be transferred to the FCC for collection.²⁴ The USAC website explains that late payment fees will not be waived unless the dispute is determined to be the result of a USAC error.²⁵

USAC records indicate that BWTel did not pay its assessed late filing fees. As a result, BWTel accumulated late payment penalties on its September 2008 through August 2010 invoices totaling \$517.62. USAC will reverse the late payment penalties for the September 2010 through January 2011 invoices totaling \$124.40 that were incurred due to a delay in processing the updated contact information included in BWTel's 2008, 2009 and 2010 FCC Form 499-As received by USAC on August 19, 2010. Because BWTel had unpaid balances with USAC that were more than 90 days old, portions of its debt were transferred to the FCC in October 2010 and January 2011.²⁶ Due to a delay in processing BWTel's updated contact information as provided in its 2008, 2009 and 2010 FCC Form 499-As, received by USAC on August 19, 2010, USAC will recall these debts from the FCC and place the debts back on the USAC invoice for collection. USAC wishes to advise BWTel that it will continue to receive late fees and penalties until its account is paid in full.

If you wish to appeal this decision, you may file an appeal pursuant to the requirement of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

USAC

cc: Cheryl Collins, FCC Office of Managing Director
Terry Cavanaugh, FCC Enforcement Bureau
Erica Myers, FCC Wireline Competition Bureau

²³ *Comprehensive Review Order* at 16380-81, ¶ 16 (the interest is equal to the U.S. prime rate on the date of delinquency plus 3.5 percent).

²⁴ The debt transfer process was implemented pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA). The DCIA requires, among other things, that federal agencies transfer debts delinquent over 180 days to the U.S. Department of Treasury for further collection action. DCIA also allows agencies to transfer debts under 180 days to Treasury. 47 C.F.R. § 1.1917(c).

²⁵ See Paying USAC Bill During Appeal Process, <http://www.usac.org/fund-administration/contributors/file-appeal/> (last visited Mar. 8, 2011).

²⁶ USAC transferred the first portion of BWTel's debt totaling \$4,589.09 to the FCC on approximately October 1, 2010. USAC transferred the second portion of BWTel's debt totaling \$1,152.93 to the FCC on approximately January 1, 2011.